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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/2020

SPONSOR Lente/Johnson/Allison **LAST UPDATED** _____ **HB** 138

SHORT TITLE Funding for Yazzie Lawsuit Responses **SB** _____

ANALYST Liu

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
	\$16,200.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB134, HB136, HB137, HB139, HB140
 Duplicates Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files
 Legislative Education Study Committee (LESC) Files

Responses Received From

Indian Affairs Department (IAD)
 Public Education Department (PED)
 Higher Education Department (HED)

SUMMARY

Synopsis of Bill

House Bill 138 appropriates \$16.2 million from the general fund to IAD for the purpose of distributing grants to each of the 19 pueblos and the Jicarilla Apache Nation, Mescalero Apache Tribe, and Navajo Nation to:

- Develop and implement education blueprints and governance structures to serve New Mexico’s American Indian students;
- Develop early childhood culturally and linguistically relevant curricula, assessment tools, construction plans, and program evaluation instruments;
- Develop and staff culturally and linguistically relevant after-school and community-based summer school programs; and
- Create, develop, and staff information technology departments to increase support network operations and high speed Internet access for tribal institutions.

FISCAL IMPLICATIONS

The appropriation of \$16.2 million in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY22 reverts to the general fund.

PED currently provides \$100 thousand grants from the Indian education fund to New Mexico tribal and pueblo departments of education. In FY20, PED awarded \$1.9 million to tribal education departments. PED establishes criteria and alignment with the Indian Education Act and agency goals to administer funding to tribal departments of education.

SIGNIFICANT ISSUES

On February 14, 2019, the 1st Judicial District Court issued a final judgment and order on the consolidated *Martinez v. New Mexico* and *Yazzie v. New Mexico* education sufficiency lawsuits, and found that New Mexico's public education system failed to provide a constitutionally sufficient education for at-risk students, particularly English language learners, Native American students, and special education students. The court's findings suggested overall public school funding levels, financing methods, and PED oversight were deficient. As such, the court enjoined the state to provide sufficient resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students.

Additionally, the court noted the state would need a system of accountability to measure whether the programs and services actually provided the opportunity for a sound basic education and to assure that local school districts spent funds provided in a way that efficiently and effectively met the needs of at-risk students. However, the court stopped short of prescribing specific remedies and deferred decisions on how to achieve education sufficiency to the legislative and executive branch instead.

During the 2019 legislative session, the Legislature appropriated \$3.25 billion to public schools, an increase of \$450 million, or 16 percent, over the prior year. On October 30, 2019, however, the *Yazzie* plaintiffs filed a motion claiming the state failed to comply with the court's injunction and requested a statewide plan to reach compliance. The *Martinez* plaintiffs filed a separate motion requesting the court to grant post-judgment discovery to assess whether the state had complied with the injunction.

PED produces an annual tribal education status report that provides information on state and federal grants allocated to Native American nations, tribes, and pueblos. The report further outlines initiatives and programs for supporting tribal students, curriculum development and tools used by school districts and charter schools to improve tribal student outcomes, and consultations with stakeholders. The 2017-2018 report can be accessed at:

<https://webnew.ped.state.nm.us/wp-content/uploads/2018/11/IED-2017-2018-TESR-Final.pdf>

PERFORMANCE IMPLICATIONS

PED notes the bill would potentially assist in building educational infrastructure in tribal communities to support student learning and academic achievement. Much of the educational infrastructure proposed in the bill could assist in possibly raising student academic achievement for American Indian students. However, it is unclear how this would directly impact American

Indian students in the public school setting. The educational infrastructure proposed in the bill could assist American Indian students in gaining skills necessary for mainstream academic success as well as the development of knowledge and skills in their home cultures and tribal languages.

The bill does not outline specific performance measures for accountability. New Mexico nations, tribes, and pueblos affected by this bill could possibly develop performance measures in coordination with IAD.

ADMINISTRATIVE IMPLICATIONS

IAD's administrative services division would likely administer the appropriations on a reimbursement basis. Currently, the IAD has 14 staff members, including 5 members in the administrative services division. The department notes an additional financial analyst FTE may be required to assist in administering these funds. The additional FTE would be responsible for administering funds, monitoring projects, and assisting tribes with reporting.

DUPLICATION, RELATIONSHIP

Some appropriations in this bill are duplicative of grants provided through the Indian education fund. The bill relates to House Bill 134, which appropriates funding to higher education institutions for multicultural and multilingual initiatives; House Bill 136, which appropriates funds for an American Indian college readiness program; House Bill 137, which appropriates funds to IAD for libraries, Internet access, and education projects for Native American nations, tribes, and pueblos; House Bill 139, which appropriates funding to IAD for education projects in the Pueblo of Zuni; and House Bill 140, which appropriates funding to IAD for education projects at the Mescalero Apache tribe.

TECHNICAL ISSUES

Provisions of this bill revert any unexpended or unencumbered balance at the end of FY22 to the general fund rather than FY21, effectively extending the appropriation over two fiscal years. Extending appropriations beyond FY21 restricts the Legislature's ability to prioritize funding, forecast revenue availability, and meet obligations of establishing a balanced budget.

OTHER SUBSTANTIVE ISSUES

IAD notes this bill encourages tribes to exercise sovereignty by identifying for themselves how to meet the needs of their Native American children. Tribal communities are most familiar with their history, language and culture and their lived experiences enrich the pedagogies for tribal education departments and support the development of early childhood education, culturally and linguistically relevant curriculum, and community-based education.

Culturally responsive teaching is an approach that encourages the use of teaching strategies, content, and materials that are relevant to students' diverse cultural, ethnic, and linguistic backgrounds. The approach is described in a 2017 article from the Institute of Education sciences as "a pedagogy that empowers students intellectually, socially, emotionally, and politically by using cultural references to impart knowledge, skills, and attitudes." Culturally responsive instruction can help educators address barriers that cause disparities in student achievement and design instruction to be mindful of those barriers, in order to mitigate the effects of negative cultural stereotypes on student performance.

Research on culturally responsive teaching is inconclusive, with a lack of experimental or quasi-experimental research. While a number of studies have examined the approach, only two looked at the impact on student outcomes, and neither established a conclusive relationship. However, this does not mean that culturally responsive teaching is not valuable – only that it has not been adequately evaluated yet.

Culturally responsive teaching is often discussed in the context of instructional best practices. While the impact on student outcomes is not conclusive, some practices of culturally responsive teaching have been shown to be effective in communicating high expectations to all students, regardless of race or cultural background. These include using a variety of visual aids that reflect students' backgrounds, using some words in students' heritage languages, and identifying students' current knowledge before instruction.

ALTERNATIVES

The executive and LFC's FY21 budget recommendation for public schools both include \$6 million to the Indian education fund to meet requirements of the Indian Education Act, which aspires to achieve similar culturally and linguistically relevant educational objectives as the appropriations in this bill and allocates funding in a similar grant funding approach. The LFC recommendation further appropriates:

- \$7.5 million to PED for indigenous, multilingual, multicultural, and special education initiatives;
- \$5 million for extended learning opportunities in schools with significant Native American student populations and small districts;
- \$9 million to develop culturally and linguistically diverse instructional materials and curricula; and
- \$11.4 million to reduce federal and local revenue credits in the state equalization guarantee, effectively increasing funding to schools with significant student populations that live on tribal or federal lands.

These appropriations can also be used to address needs outlined in this bill, albeit under the administration of PED rather than IAD.

In 2014, the Public School Capital Outlay Council (PSCOC) implemented the Broadband Deficiencies Correction Program (BDCP). The sole purpose of this program is to provide affordable and reliable connectivity to New Mexico students. An added benefit to the BDCP is the federal funding contribution of up to 90 percent of the cost, which makes connectivity that much more affordable for school districts. This program has resulted in \$55 million of federal E-rate funding for schools with a \$5.6 million PSCOC match and \$1.8 million local school district match.

While tribal schools are not under the purview of PSCOC, LESC notes that tribal schools and libraries are eligible for federal E-rate funding, which provides up to 90 percent of the cost to upgrade broadband infrastructure. The Public School Facilities Authority assisted and coordinated the development of two successful broadband partnerships with Middle Rio Grande and Jemez-Zia, leveraging E-rate funding to improve broadband connectivity for six pueblos.